

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:03-cr-042

MARK AMBRESTER,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

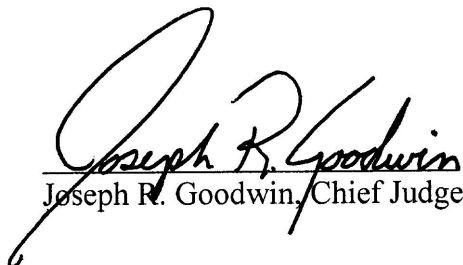
His original offense conduct resulted in a base offense level of 34, and a criminal history category of III. The defendant received a two-level enhancement for possession of a firearm. The

defendant had no other enhancements or reductions, with the exception of a three-level reduction for acceptance of responsibility. Based on a total offense level of 33, his original guideline range was 168 to 210 months. The United States later filed a motion for a reduction of the defendant's sentence pursuant to Rule 35, and the court departed downward and imposed a sentence of 72 months imprisonment, corresponding with a total offense level of 25. The United States has indicated that it does not object to a two-level reduction in the defendant's sentence.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 23, and a guideline range of 60 to 71 months (due to a mandatory minimum sentence of five years under 21 U.S.C. § 841(b)(1)(B)). It is further **ORDERED** that Defendant's previous sentence be reduced to a period of 60 months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: March 17, 2008


Joseph R. Goodwin, Chief Judge